

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	File Number EB-03-DL-080
	)	
Leon's Radio Inc.	)	NAL/Acct. No.200332500007
Owner of antenna supporting structure 1011122	)	
located in Moore, Oklahoma	)	FRN 0001-7075-95
	)	
Oklahoma City, Oklahoma	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Released: May 2, 2003**

By the Enforcement Bureau, Dallas Office:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find Leon's Radio, Inc. ("Leon's Radio"), owner of antenna supporting structure 1011122, apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000) for willful violation of Section 17.50 of the Commission's Rules ("Rules").<sup>1</sup> Specifically, we find Leon's Radio, Inc. apparently liable for failing to clean or repaint its antenna structure to maintain good visibility.

**II. BACKGROUND**

2. On February 20, 2003, an agent from the Commission's Dallas Field Office inspected the antenna supporting structure at or near geographic coordinates 35° 22' 10" N, 97° 27' 37" W. The agent observed that the paint was dark and dull and that there was unpainted coax on the tower. The condition of the paint and the unpainted coax resulted in poor visibility of the structure's markings when observed at approximately ¼ of a mile. The structure owner stated he knew the structure needed repainting and had been unable to find a painting company with the appropriate insurance. The structure is registered to Leon's Radio Inc. under antenna structure registration number 1011122. The registration requires marking and lighting.

**III. DISCUSSION**

3. Section 17.50 requires antenna structures requiring painting under Part 17 of the Rules to be cleaned or repainted as often as necessary to maintain good visibility. Antenna structure owners are responsible for maintaining a structure's painting.<sup>2</sup> Leon's Radio owns antenna structure 1011122. The structure requires painting pursuant to its antenna structure registration and because the structure's height

---

<sup>1</sup> 47 C.F.R. § 17.50.

<sup>2</sup> See 47 C.F.R. § 17.6(a).

exceeds 200 feet.<sup>3</sup> On February 20, 2003, Leon's Radio's antenna structure had unpainted coax obscuring portions of the painted structure and the paint was dark and dull so that the bands were difficult to distinguish at approximately ¼ of a mile, resulting in poor visibility of the structure.

4. Based on the evidence before us, we find Leon's Radio willfully<sup>4</sup> violated Section 17.50 of the Rules by failing to clean or repaint its antenna structure to maintain good visibility.

5. Pursuant to Section 1.80(b)(4) of the Rules,<sup>5</sup> the base forfeiture amount for failing to comply with prescribed lighting and/or marking is \$10,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>6</sup> Considering the entire record and applying the factors listed above, this case warrants a \$10,000 forfeiture.

#### IV. ORDERING CLAUSES

6. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,<sup>7</sup> and Sections 0.111, 0.311 and 1.80 of the Rules,<sup>8</sup> Leon's Radio, Inc. is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for willful violation of Section 17.50 of the Rules by failing to clean or repaint its antenna structure to maintain good visibility.

7. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, Leon's Radio, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

8. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>9</sup>

---

<sup>3</sup> See 47 C.F.R. § 17.21(a).

<sup>4</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act . . . ." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

<sup>5</sup> 47 C.F.R. § 1.80(b)(4).

<sup>6</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>7</sup> 47 U.S.C. § 503(b).

<sup>8</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80.

<sup>9</sup> See 47 C.F.R. § 1.1914.

9. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12<sup>th</sup> Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

10. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

11. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

12. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to Leon's Radio, Inc., PO Box 94748, Oklahoma City, Oklahoma 73143.

FEDERAL COMMUNICATIONS COMMISSION

James D. Wells  
District Director, Dallas Office, Enforcement Bureau

Attachment